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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,706	10/25/2001	Peter Lauer	22750/493	6149

26646 7590 04/23/2004

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EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/890,706

Applicant(s)

LAUER ET AL.

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-13, 17-22 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-13, 17-22 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 23 April 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 15, 2004 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11-13, 20-22, 24 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Cretinon 6,321,469. Cretinon 469 discloses all the limitations of the claims

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including the following: an outsole (including sections 15, 15, 24 and 25); an upper part (see Figure 4 reference numbers 12 and 13); the outsole having a contraction (angled in areas on the sides of the arch); the contraction extending to a first area where a back of the foot is located (see Figure 4); a heel guide (see Figure 4, part 12, heel guide is guide in the heel area of part 12 with the side walls) for a heel of the foot is provided in the upper part; the heel guide having one of a heel plate (portion of 12 that foot would rest upon) and a flexible heel brace (side walls of 12 around arch and heel); one of the heel plate and flexible heel brace are arranged in a second area where the heel of the foot is located and having a smaller height above the outsole in an area of an Achilles tendon of the foot than in the area of a front heel bone of the foot (see Figure 4, walls of 12 are lower in the back of the heel than near the arch); one of the heel plate and the flexible heel brace is configured such that the Achilles tendon of the foot is free (walls in part 12 of Figure 2); in an area of the front of the foot the outsole has a profiling (see Figure 4, forward of the arch) configured to provide for a great flexibility (slits or grooves in a material provide flexibility to the material) of the outsole with regard to the heel-to-toe motion of the foot; the contraction in the outsole is in a third area between where

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the forefoot of the foot is located and where the back of the foot is located (see Figure 4); the outsole has a connecting area adjacent the contraction (that area of the outsole that connects the heel to the forefoot); the contraction in the outsole is arranged on an inner side of the shoe (see Figure 4); the contraction of the outsole is arranged on an outer side of the shoe (also Figure 4, but not as dominant); the outsole further has a contraction being arranged on an outer side of the shoe and inner side of the shoe (see last two explanations immediately above); the outsole has a connecting area adjacent the contraction (connecting heel area to forefoot area) configured to minimize torsion of a forefoot with respect to the back of the foot, the outsole is provided with a heel in the first area (see Figure 4).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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5. Claims 17, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cretinon 6,321,469 as applied to claim 11 above in view of DuFour 5,024,007. Cretinon '469 discloses all the limitations of the claims except for the outsole profiling having one of parallel grooves and ray-shaped grooves; the one of the parallel grooves and the ray-shaped grooves extending at least partially over a width of the shoe and the profiling being made up of at least two materials having different elasticity's. DuFour '007 teaches that the forefoot area of a sole with profiling can have that profiling made up of grooves and material filled within the grooves to aid in flexibility and gripping of the sole to the contact surface. DuFour '007 also teaches that the grooves can be parallel (see Figure 1) and extend at least partially over a width of the sole of the shoe and made up of two materials (A and B), the materials having different elasticity's (see col. 2, lines 56-68). Therefore, it would have been obvious to make the profile of the shoe of Cretinon '469 out of two material of different elasticity's and with parallel grooves or rays, as taught by DuFour '007, to aid in making the sole flexible as well as still allow for the sole to grip an external surface, as taught by DuFour '007.

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6. Claims 18 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 17 immediately above in view of Young 4,501,077. The references as applied to claim 17 above disclose all the limitations of the claim except for the one of the parallel grooves and the ray-shaped grooves extending over the entire width of the shoe. Young '077 teaches that the flexion grooves in an outsole can extend over the entire width of the outsole to allow for the outsole to flex while the person walks. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to make the grooves of the references as applied to claim 17 above extend over the entire sole to allow for flexibility of the entire sole throughout the gait of the user.

#### ***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday 8:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1148.



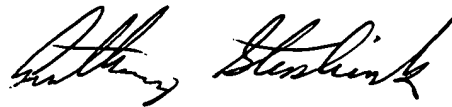
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Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>



Anthony D Stashick  
Primary Examiner  
Art Unit 3728

ADS  
April 5, 2004